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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,089	09/19/2006	Simon Walker	PP012US1	3955
53896 7590 04/02/2009 PEAK INNOVATIONS INC. ATTN: IP LEGAL DEPARTMENT 203 - 11782 HAMMERSMITH WAY RICHMOND, BC V7A-5E2 CANADA			EXAMINER WENDELL, MARK R	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 04/02/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/599,089

Applicant(s)

WALKER, SIMON

Examiner

MARK R. WENDELL

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-13, 16-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Objections

Claims 18-24 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The examiner notes that the limitations within claims 18 and 19 already exist in parent claim 6. The examiner further notes that claims 20-24 depend from these objected claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-13 and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Platt (US 6141928). Regarding claims 1 and 11, a post system for a railing, the post system comprising:

- o A railing post (4) having first and second ends; and
- o A post base (14) connectable to said first end of said railing post, said post base comprising an inner structural member (22) and an outer surface

member (14), said inner member being substantially embedded within said outer member, said inner member comprising steel (see column 5, lines 15-30) and said outer member comprising aluminum (the examiner notes that a material is never specifically given for item 14 which is referred to as base molding. Column 3, lines 60-67 state that the support block which is attached to the base molding can be aluminum or any other extruded material. The examiner further notes that it is well known in the art for base molding to be made from a plethora of materials and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416)).

Regarding claim 4, Platt illustrates the post system having fasteners (20) connecting the base and the post.

Regarding claim 5, Platt discloses the claimed invention except for the fasteners comprise a dimension of 08 x 80mm. It would have been an obvious matter of design choice to use fasteners with a dimension of 08 x 80mm in order to rigidly secure the post base to the railing post, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 6, 12 and 18-19, Platt illustrates a post system for a railing, the post system comprising:

- A railing post (4) comprising an elongated tubular body and first and second ends, said railing post comprising aluminum (the examiner notes that the specification teaches the post to be PVC, an extruded material. The examiner notes that aluminum is also an extruded material well known to make posts. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416)); and
- A structurally reinforcing insert (16) snugly insertable within said first end of said railing post, said insert comprising steel (the examiner notes that the specification states in column 4, lines 1-10 that the insert can be made from a block of suitable material. It would have been obvious to one having ordinary skill in the art at the time of invention to make the insert of steel since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416)).

Regarding claim 7, Platt teaches a post base (14) connectable to said first end of said railing post (14), said post base comprising an inner structural member (22) and an outer surface member (14), said inner member being substantially embedded within

said outer member, said inner member comprising steel and said outer member comprising aluminum (see rationale above).

Regarding claims 8, 13 and 20, Platt illustrates the insert further comprising an engagement member (26).

Regarding claims 9 and 16, Platt illustrates the post system having fasteners (20) connecting the base and the post.

Regarding claims 10 and 17, Platt discloses the claimed invention except for the fasteners comprise a dimension of 08 x 80mm. It would have been an obvious matter of design choice to use fasteners with a dimension of 08 x 80mm in order to rigidly secure the post base to the railing post, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 21, Platt illustrates in Figures 7 and 8 said post base further comprising horizontal flat surfaces on four top corners, said horizontal flat surfaces each comprising a bore therethrough for receiving a deck fastener capable of securing the post base to a deck surface.

Regarding claim 22, Platt illustrates in Figure 7 said post base further comprising an outer wall top surface that is sloped to distribute water away from said railing post, said outer wall top surface adjacent to said horizontal flat surfaces on said four top corners.

Regarding claim 23, Platt illustrates in Figures 7 and 8 four bores for engagingly receiving said fasteners (20), each of said bores passing through said post base, said railing post and said insert, said fasteners being securable through said bores, said fasteners being engageable to said post base, said railing post and said insert at the same time. The examiner also point the applicant to US Patents 7243473 and 6988700 for further examples of this structure.

Regarding claim 24, Platt illustrates 4 corner channels within the post system; however does not illustrate the bolts being placed in these areas. It would have been obvious to one having ordinary skill in the art at the time of invention to place the bolts in these areas rather than on the sides since there would be no unexpected results produced and the invention would perform the same way.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK R. WENDELL whose telephone number is (571)270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

/M. R. W./
Examiner, Art Unit 3635
March 30, 2009